Separation of the Executive from the Judiciary.

PRESIDENT: The next resolution that stands on the agenda is against the name of Mr. G. Parameswaran Pillai. It runs as follows:

This Council recommends to the Government that early steps be taken for effecting a complete separation of the executive from the judiciary and placing the entire judiciary under the direct and immediate control of the High Court.

He will now move the resolution.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I beg to move that this Council recommends to the Government that early steps be taken for effecting a complete separation of the executive from the judiciary and placing the entire judiciary under the direct and immediate control of the High Court.

Sir, in moving the resolution on the complete separation of the executive from the judiciary, I do not propose to take up the time of this House in dealing with the several arguments in support of the principle underlying my motion. The question has no novelty about it, for the attention of the public and the Government has been drawn to it for several decades now.

The subject came up for consideration even so far back as 1792, when Lord Cornwallis' Government declared that the combination of the executive and judicial functions was highly objectionable and undesirable. Mr. Frederic Halliday, President of the committee appointed to enquire into the Police organisation, observed in his memorandum that, so long as this combination of functions lasted, public confidence in our tribunals must always be liable to injury and the authority of justice itself must be abused and misapplied and that the power of appeal was not a sufficient remedy. Lord Hobhouse, Sir Richard Garth, Sir Richard Couch, Sir Raymond West, Sir John Budphear, Sir William Markby and Mr. Reynold memorialised the Secretary of State on this matter in 1899. Sir Barnes Peacock, Chief Justice of the Bengal High Court, was strongly in favour of complete separation. R. C. Dutt, Sir Harvey Adamson, Sir Surendranath Banerjea and P. C. Mitter had framed elaborate schemes of separation as well. Subsequent to this, the Governments of the United Provinces, Bihar and Orisa, the Punjab, Central Provinces, Bengal and Bombay have accepted the principle of separation and committees were appointed to draw up schemes for giving effect thereto. The Governments of H. E. H. the Nizam of Hyderabad, and Their Highnesses the Maha Rajas of Indore, Baroda and Kapurthala have ordered the severance of the two functions. The Legislative Assembly and the Madras Legislative Council have passed resolutions in favour of complete separation.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I correct Mr. G. Parameswaran Pillai? The Madras Council has not passed a resolution on the subject.

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MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): It has passed a resolution for the appointment of a committee and I suppose the principle is accepted before committees are appointed to work out detailed schemes.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Only a resolution for the appointment of a committee has been passed by the Madras Council.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): That is all that I said. The committees appointed by the Madras and Bengal Governments have also submitted their reports giving details of their schemes.

In Travancore, we find that, so far back as 1811, the first reform which Col. Munro effected when he took charge of the administration was the separation of the revenue and judicial functions from one another by abolishing the offices of Valia Sarvadhikaryakar and Sarvadhikaryakar. The Karyakars were also deprived of their judicial functions and were reduced to the position of mere revenue officers under the name of Tahsildars. By 1834 the judiciary was entirely re-constructed upon the model of the British Indian system and the Tahsildars were given police and magisterial functions.

Coming to modern times, from the second session of the Sri Mulam Popular Assembly, repeated representations have been made urging the complete separation of the two functions and the desirability of placing the magistracy under the direct control of the High Court as in the case of the munsiffs and judges. Pointed attention of the Government was drawn to this matter at the eighteenth session of the Assembly by my friend Mr. Kunjitomman; and the Dewan on behalf of the Government declared that there was no difference between the Government and the member as regards the soundness of the policy suggested by him. But he could not overlook the fact that there were some practical difficulties in giving full effect to his suggestions. The Dewan added that the Government would do their best to give effect to this policy as far as possible. A few questions on the same subject in the Legislative Council under Regulation I of 1095 also elicited the answer that the matter was engaging the attention of the Government.

From these, it will be clear that the Governments, both here and elsewhere, have recognised the soundness of the policy urged in this respect by the representatives of the people. We are not yet fully aware of the nature and extent of the practical difficulties that stand in the way of the Government giving full effect to this much-needed reform.

Sir William Vincent quoted with approval the meaning of the term 'separation' as stated by a Law Member of the Government of India, *i. e.*, that the judicial officers should be specially trained for their duties and that in performing these duties they should not be subjected to *any form of executive pressure*. According to the Hon'ble Pandit Jagat Narayan of the United Provinces, the separation of judicial and executive functions really means that those who are entrusted with judicial work

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should not be placed under any subordination to those authorities which have to exercise executive functions. Those who are entrusted with judicial functions should in no way be under the authority of executive officers in order that their judgments might not be influenced by anything said or done by these officers. When a similar resolution was under discussion before the Legislative Assembly, Sir William Vincent, the official member in charge, observed:

"The necessity of trials being held in an atmosphere of cool impartiality is a matter of great importance, and there is in many cases a fear, an unjustified fear, I believe, but still an apprehension that an over-zealous officer in his anxiety to preserve his good credit as an administrator in a sub-division or to maintain the peace, may be too ready to credit prosecution evidence and not likely to be absolutely fair to the accused. I do not think there is any ground for that apprehension, but I believe in some cases it does exist. There is on this account a feeling of mistrust of our courts in some cases. I believe there is little foundation for it, but it is there, and it is all important in a judicial trial that the court should be such as to command the absolute confidence of those who appear before it. That is indeed a general principle of the greatest importance whether the apprehensions are sound or not."

So, he was in favour of separation; but how far that could be carried out was a matter of method and resources; and we find that the Travancore Government are also substantially of the same view.

As observed in the report of the committee of the Bengal Government, in framing any scheme on this subject, the following essential points should be borne in mind:—

(1) Separation should be as complete as possible;

(2) it should disturb existing conditions as little as possible;

(3) so far as is consistent with efficiency, any increase of cost should be minimised as far as possible.

If these essentials are kept in view, it appears to me that no serious practical difficulties can present themselves to the Government in the carrying out of the reform without any further delay.

From the discussion on the subject carried on in other Legislative Councils, I can perceive only two arguments that may be advanced on behalf of the Government with any degree of fairness against complete separation being effected at once. They are, firstly, the probable additional cost and, secondly, the difficulties in divesting the District Magistrates and their assistants of the powers under the preventive sections of the Criminal Procedure Code. Both these difficulties have been solved by the committees appointed elsewhere for the purpose and by other eminent men who have bestowed some consideration upon this question. To my mind, it appears that, in Travancore at any rate, neither of the above considerations need block our progress in effecting a complete separation of the two functions, inasmuch as the way has already been paved for us long ago and all the necessary facilities already exist among us even at present.

Several practical schemes for separation have been evolved by eminent jurists in India. The latest report available to the public is

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that of the Bengal Committee. That committee presided over by a High Court Judge examined all the previous schemes on the subject and their main recommendations do furnish a working basis for us.

According to that Committee—

(1) The hearing of appeals from all magistrates with second and third class powers should in future take place not before the District Magistrate—Collector or his subordinates, but before the Sessions Judge or some purely judicial officer empowered in that behalf.

(2) The inspection of criminal courts should also be made by the Sessions Judge or some purely judicial officer empowered in that behalf and the responsibility for the efficient working of all criminal courts in the district and due despatch of criminal business should rest in future not with the District Officer but with the Sessions Judge.

They say that, unless this is done, there is a grave risk that the criminal work of the district may deteriorate.

(3) The present staff of Deputy Magistrates—Deputy Collectors, Sub-Deputy Magistrates—Sub-Deputy Collectors should be divided into two branches, and one should be employed in purely judicial work and the other in purely administrative, executive and revenue work.

They say that the control and supervision, including questions of pay, promotion and transfer of those engaged in purely judicial work, should lie exclusively with the judicial authorities.

(4) The High Court should exercise the same control and supervision over the magisterial staff as they now exercise over the civil staff.

In regard to preventive sections, there are two opinions embodied in the report.

In ordinary cases under sections 107, 108, 109, 110, corresponding to our sections 90, etc., when the district officer requires a person to show cause, the proceedings shall be sent for trial before a judicial officer, but in cases of emergency which arise under these sections and when immediate action is necessary, it shall be open to the district officer to pass orders, but such orders shall be appealable before the Sessions Judge. Proceedings under sections 145 and 147 shall be before a judicial officer only, initiation of proceedings and the power to make provisional orders under section 145 (4) remaining as at present with the district officer.

In order to avoid delay in emergent cases, the committee provide that the district officer should forward the proceedings to the Sessions Judge with a request that they be speedily disposed of and that a High Court order should require the District Judges to give effect to the request at once.

The other view with regard to the preventive sections of the Criminal Procedure Code is that the powers under those sections should be taken away from the executive officers and transferred to the purely

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judicial officers above mentioned. The district officer may retain the power of initiating or drawing up proceedings under these sections, but the hearing should take place before a judicial officer.

Now, without incurring any additional cost, it appears to me that we can adopt the policy enunciated in the above recommendations. We have at present 19 Stationary Magistrates who are purely judicial officers. That being so, when they are placed directly under the administrative control and supervision of the High Court or the Sessions Judge, and when the powers to hear appeals from these magistrates are taken away from the Dewan Peishkar and District Magistrate and conferred on the Sessions Judge or other purely judicial officer, the separation will be complete and effectual, in so far as the subordinate magistracy is concerned. And this does not and cannot involve any additional cost. For the time now being devoted to the hearing of criminal appeals by the district officers and their assistants cannot be said to be much. In 1097, the number of cases disposed of by 13 courts was just over 1,500, or, on an average, 113 cases per court in one year. It will be seen that most of these cases may have been filed on one and the same judgment and so the time bestowed in hearing one appeal will be sufficient to dispose of more than one such appeal. So, in case the Sessions Judges are asked to hear these appeals, much of their time will not be occupied on this account and there will be complete separation effected to that extent.

Then, we have at present three Peishkar-District Magistrates, one Commissioner-District Magistrate and eight Division Assistants and First Class Magistrates. In case the judicial functions are separated from these officers, I should certainly think that even the Government will concede that, for purely revenue and executive functions, they do not require as many as four district officers and eight assistants. To my mind, it should then be possible for the Government to set free one-half of the above number, or at least five of the Division Assistants to be in charge of purely judicial work and exercising first class magisterial powers in important centres.

I would also suggest that, in regard to the powers under the preventive sections, it is desirable to retain with the District officers merely the power to initiate or draw up proceedings and send up the cases for hearing and trial before the Sessions Judge. It may be argued that the Sessions Judge may not find time for all this additional work imposed on him. My answer is this: It is well-known to my lawyer friends that in practice the District Judges at present seldom find time to take up civil work owing to pressure of criminal work. This has resulted in several instances in vast accumulations of arrears on the civil side, and both permanent and temporary Additional Judges have been appointed. One of the Additional Judges may be put in charge of all the criminal work, including the additional duties which the District Judge may be entrusted with when the separation scheme is given effect to; and this

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may be done even without making any material amendments to the Criminal Procedure Code, for the Government may by notification invest such Additional Judge with the powers of a District Magistrate. In other words, the existing Additional Sessions Judges may be converted into the purely judicial officers contemplated by the Bengal Committee to exercise the functions of the District Magistrate and his assistants, except in the matter of trying original criminal cases triable by a First Class Magistrate.

In British India, the delay in giving effect to the separation of functions appears to me to be due more to considerations of political expediency than anything else. But, fortunately, we here are placed in a more advantageous position in that respect. For political agitation in this country is a most peaceful game. Conditions here do not admit of any comparison with those obtaining in British Indian politics. The oft-quoted phrase, "maintenance of law and order" has no special significance to us, for there is nothing abnormal in our being orderly or law-abiding.

The change will thus not involve any additional cost, nor is it likely to result in public inconvenience. In fact, in the long run, there will be even a saving in the expenditure under District Courts, for the District Judges may under the altered conditions find it possible to devote greater attention to civil cases, and some at least of the Additional Judges now temporarily appointed may be dispensed with. At any rate, it is almost certain that the new scheme will not necessitate any further expenditure than is being now incurred on account of the Temporary Additional Judges.

Speaking of the additional cost, I might also submit incidentally that it is my firm conviction that the sub-magistrates are very much underpaid. In any scheme of separation of functions, it is essential that the position of the magistrate and that of the munsiff should be interchangeable. In fact, only qualified men with sufficient legal training should be recruited as magistrates. The power of appointment may rest with Government as in the case of munsiffs and Judges. But the High Court may be asked to nominate duly qualified men for recruitment to the criminal branch of the judiciary, just as they are asked to nominate candidates for munsiffs' and Judges' posts. This will ensure greater purity in the administration of justice and will tend to foster judicial independence throughout the entire judiciary. This cannot be fully attained without improving the pay and prospects of the sub-magistrates. The prestige of the magistrate has in recent years been very much lowered in the eyes of the public and the policemen, on account of the comparativly low salary now attached to his office. A police officer, with decidedly inferior qualifications, is able to boss over the magistrate, for he receives a more decent pay than the latter. But the improvement of the pay and prospects of the sub-magistrates is already their due and cannot be said to be the direct result of any scheme of separation, but should be regarded as part of a general scheme of reorganisation.

In regard to public convenience, it will not suffer, for the reason that we have District Courts within short distances and at convenient

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centres. The public will also prefer their appeals being heard by a higher forum, *viz.*, the Sessions Court.

It is, therefore, my earnest appeal to the Government that the considerations weighing with the Government in British India in delaying the introduction of this reform should not in the least influence this Government, and that, as in several other matters, we might take a lead in the right direction for others to follow in due course. Therefore, I would commend this resolution for the acceptance of this Council.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I second it.

PRESIDENT: Mr. Kunjitomman, your resolution is substantially identical. Do you move yours or wish to bring it up as an amendment? Or do you withdraw your resolution?

MR. TARIATU KUNJITOMMAN (*Muvattupuzha*): റവന്യൂവും മജിസ്ട്രീരിയലും അധികാരങ്ങൾ രണ്ടും ഒരുദ്യോഗസ്ഥനിലിരിക്കുന്നതു് വളരെ ദോഷകരമായിട്ടുള്ളതാണു്. അതുകൊണ്ടാണു് ഞാൻ അതിനെ വേർപെടുത്തണമെന്നു് ഒരു പ്രമേയംകൊണ്ടുവന്നിട്ടുള്ളതു്. ആ പ്രമേയത്തിന്റെ തത്വത്തിന്നനുസരണമായിട്ടാണു് എന്റെ സ്നേഹിതൻ മിസ്റ്റർ പരമേശ്വരൻപിള്ളയുടെ പ്രമേയവും. അതിനാൽ ഞാൻ ഈ പ്രമേയത്തോടു പൂർണ്ണമായി യോജിക്കയും എന്റെ പ്രമേയത്തെ പിൻവലിക്കയും ചെയ്യുന്നു. ഇങ്ങനെ ഒരു പ്രമേയംകൊണ്ടുവരാനുള്ള കാരണം റവന്യൂ ഉദ്യോഗസ്ഥന്മാർ മജിസ്ട്രീരിയൽ കാര്യങ്ങൾ നടത്തുമ്പോൾ ജനങ്ങൾക്കു വളരെ സങ്കടമുണ്ടാകുന്നതാണു്. ഒരാളുടെ പേരിൽ റവന്യൂ ഓഫീസിലേയോ ഫാറസ്റ്റിലേയോ മറേതെങ്കിലും ഡിപ്പാർട്ട്മെൻറിലേയോ ഉദ്യോഗസ്ഥന്മാർ കേസുകൾ കൊണ്ടുവരുന്നതു മിക്കവാറും ഗവർൺമെൻറിനു നഷ്ടംവരുത്തി എന്നുള്ള സ്വഭാവത്തിലായിരിക്കും. അതിൽ റവന്യൂഉദ്യോഗസ്ഥനായ മജിസ്ട്രേട്ടു് ഇങ്ങനെയുള്ള കേസുകളെ മറ്റു കൂടികാര്യം തമ്മിലുള്ള കേസുകളെപോലെ വിചാരിച്ചുവരുന്നില്ലെന്നാണു് പൊതുജനങ്ങൾക്കു ബോദ്ധ്യം. എന്തായാലും ജനങ്ങൾക്കിതിൽവലിയ സങ്കടമുണ്ടു്. പൊതുജനങ്ങളുടെ ഇടയിൽ പരക്കെ സങ്കടമായിട്ടുള്ള ഈ സംഗതി ഞാൻ ഇതിനുമുൻപു് ഒരുപ്രാവശ്യം പ്രസ്താവിച്ചിട്ടുണ്ടു്. അന്നു തഹശീൽദാർമാർക്കു മജിസ്ട്രേട്ടധികാരം ഉണ്ടായിരുന്നു. ഇപ്പോൾ അതു വേർപെടുത്തിയിരിക്കയാണു്. എന്നാൽ അതുകൊണ്ടു പൂർണ്ണമായ പ്രയോജനമില്ല. ഇപ്പോഴത്തെസ്റ്റേഷണറി മജിസ്ട്രേട്ടന്മാർ റവന്യൂഉദ്യോഗസ്ഥന്മാരുടെ കീഴിൽതന്നെയാണല്ലോ. അവരുടെ അപ്പീൽ കേൾക്കുന്നതു് ഡിവിഷൻ അസിസ്റ്റൻറായ ഫാംക്ലാസ് മജിസ്ട്രേട്ടോ പേഷ്കാരായ ഡിസ്ട്രിക്ട് മജിസ്ട്രേട്ടോ

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ആണ്. എക്സൈസ്, ഫ്ാറസ്റ്റ് മുതലായ കേസുകൾ വരുമ്പോൾ അവരും കീഴിലുള്ളവരെ അനുകരിച്ചു കാണുന്നു. കേസിന്റെ നടപടികളിൽതന്നെ വളരെ വ്യത്യാസം ഉണ്ടാകുന്നുണ്ട്. ഒരു ഫ്ാറസ്റ്റ് റേഞ്ചറൊ എക്സൈസ് ഇൻസ്പെക്ടരൊ കൊണ്ടുവരുന്ന കേസ് വളരെനാൾ നീട്ടിക്കക്ഷികളെ വളരെ സങ്കടപ്പെടുത്തുന്നുണ്ട്. എക്സൈസ് കേസെടുക്കുമ്പോൾ എക്സൈസ് ഇൻസ്പെക്ടർ മിക്കപ്പോഴും വരികയില്ല. ഫ്ാറസ്റ്റ് കേസ് എടുക്കുമ്പോൾ റേഞ്ചർ ആനയെപിടിപ്പിക്കാനൊ തടി വില്പിക്കാനൊ പോയേക്കും. അവർ വന്നില്ലെങ്കിൽ കേസ് പിന്നെയുംനീട്ടും. ചിലക്കു മനഃപൂർവ്വവിരോധം ഉണ്ടെങ്കിൽ ഇങ്ങനെ കേസുകൊടുത്തു ബുദ്ധിമുട്ടിക്കാം. തെളിവില്ലാതെവന്ന് പ്രതിയെവിട്ടാലും അവധിനീട്ടിവയ്പിച്ചു കക്ഷിയേയും സാക്ഷികളേയും നടത്തി കഷ്ടപ്പെടുത്താം. അതുതന്നെ ഒരു ശിക്ഷയായിട്ടാണ് ഇരിക്കുന്നതു്. ഞാൻ ഒരു വക്കീലുമല്ല; വാദിയുടേയോ പ്രതിയുടേയോ നിലയിൽ ക്രിമിനലോ സിവിലോ കേസു നടത്തിയുള്ള അനുഭവവുമെനിക്കില്ല. എങ്കിലും ജനങ്ങളുടെ സങ്കടം ഈ വിധത്തിലാണെന്ന് എനിക്ക് അവരിൽ നിന്നറിയാം.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): സാക്ഷിയായിട്ടെങ്കിലും പോയിട്ടില്ലെ?

MR. TARIATU KUNJITOMMAN (*Muvattupuzha*): വാദിഭാഗം സാക്ഷിയായിട്ടു രണ്ടു ഫ്ാറസ്റ്റ്കേസുകളിൽ കോർട്ടിൽ പോയിട്ടുണ്ട്. ഒരു കേസിൽ ൫ ൦ തവണയിലധികം അവധി നീട്ടിയതുകൊണ്ടു ബുദ്ധിമുട്ടുകയുംചെയ്തു. ആ അനുഭവംകൂടി ഇരുന്നിട്ടാണ് ഞാൻ പറയുന്നതു് കൂടികൾ തമ്മിലുള്ള കേസുകളിൽ ഒന്നിലും ഞാൻ സാക്ഷിയായി പോയിട്ടില്ല.

അതുകൊണ്ടു ഗവർൺമെൻറിന്റെ കേസായാലും കൂടികളുടെ കേസായാലും നീതിന്യായം നടത്തുന്നകാര്യത്തിൽ ഒരുപോലെ പ്രവർത്തിക്കേണ്ടതാണു്. ഈ സംഗതിയിൽ റവന്യൂഉദ്യോഗസ്ഥന്മാരായ ന്യായാധിപന്മാരിൽ ചിലർ എന്തുചെയ്യേണ്ടുഎന്ന ധർമ്മസങ്കടത്തിലായി തീരുന്നുണ്ട്. അതിനാൽ അവരെ ഹൈക്കോടതിയുടെ കീഴിലാക്കിവയ്ക്കണം. ഗവർൺമെൻറുകേസുകൾക്കു മാറുള്ളവയിൽ നിന്നു പ്രത്യേകമായ ഒരു പദ്ധതി വേണമെന്ന് ഗവർൺമെൻറ് ആശിക്കുന്നില്ലെന്നു വിചാരിക്കുന്നു. മുൻസിഫന്മാരും, ജഡ്ജിമാരുമൊക്കെ ഓരോകാര്യങ്ങൾ പ്രവർത്തിക്കുന്നതുപോലെ ഇവരും കൂടുതൽ ന്യായത്തോടെ പ്രവർത്തിക്കുന്നതിനു മജിസ്ട്രേട്ടധികാരത്തെ റവന്യൂഉദ്യോഗസ്ഥന്മാരിൽനിന്നു പൂർണ്ണമായി വേർപെടുത്തുകതന്നെ ചെയ്യണം. അതുകൊണ്ടു ഞാൻ ഈ പ്രമേയത്തെ പൂർണ്ണമായി അനുകൂലിക്കുന്നു.

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[Mr. V. Subba Aiyar.]

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, Government do not object to the principle underlying the motion. On the other hand, much has been done in that direction, and I am glad to see that Mr. Paramesvaran Pillai has referred to it. But the difficulty lies in giving practical effect to the separation right through from top to bottom; and the question is whether it would be possible or desirable to do so. I will therefore try to lay before the House what has been done, and if possible, to convince Mr. Paramesvaran Pillai of the practical difficulty in that direction and leave the House to judge.

In the first place, it will be conceded that, so far as criminal work is concerned, it is now done by the Bench Magistrates, by the stipendiary Stationary Magistrates, by the Tahsildar, by the Division Assistant and First Class Magistrate, and by the Sessions Court and the High Court. Of these, it will be conceded that the work of Bench Magistrates is completely separated from the executive. Therefore, nothing more is desirable in that direction.

With reference to the Second Class and Third Class Magistrates, Mr. Paramesvaran Pillai told us that there are about nineteen Stationary Magistrates, and he was good enough to admit that they exercise purely judicial functions, so that the only other persons who are magistrates are only five in number, *viz.*, the Tahsildars of Nedumangad, Pattanapuram, Pattanamtitta, Todupuzha and Minachil. In these places the magisterial work is very light and the revenue work is not very heavy, with the result that it was thought that both might be combined in the same set of officers. If, consistent with financial considerations, the Tahsildars could be divested of their magisterial work, and Stationary Magistrates could be appointed in these places also, Government would gladly do so. But in asmuch as the work is not heavy and since the cost also will be very much—each Stationary Magistrate costs on an average about Rs. 2,500 per annum—it was thought that such a separation was not necessary. Therefore, so far as the lowest ranks of magistrates are concerned, there has been complete separation.

At present, the decisions of a magistrate are heard in appeal only by the First Class Magistrate, though theoretically the District Magistrate also has got the power. I believe the members of this House are aware that the District Magistrates do not ordinarily exercise that power and it is the First Class Magistrates or the Division Assistants that usually hear the appeals and dispose of them. These officers do not exercise any sort of control over the magistrates. In other words, so far as these officers are concerned, *viz.*, the Division Assistants, they have no manner of control over the Stationary Magistrates except in the matter of hearing appeals under the Criminal Procedure Code. Every decision of Stationary Magistrates is also subject to revision by the Sessions Court and the High Court. On account of our State being very small and on account of the consequent nearness of the High

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Court from even the farthest corners of the State, I think that, in cases of miscarriage of justice or error in procedure on the part of the Stationary Magistrates, parties immediately appeal to the High Court for their interference in the matter. Appeals from the Stationary Magistrate's Court are heard by First Class Magistrates. I have not heard anything from Mr. Paramesvaran Pillai to the effect that either the District Magistrate or the Government do exercise any influence over their subordinates in their discretion in judicial matters and thus cause any miscarriage of justice, and I do not think any member of the House will vouch for it. Mr. Kunjitomman was in a position to say that in Forest and Excise cases adjournments were freely granted and people were unnecessarily worried. I think that remark is due to the fact that he has not had experience of attending courts in other criminal cases wherein also adjournments are freely granted.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): As a point of personal explanation, I may say that I *did* make a statement to this effect that, in regard to cases where the executive is suspected to have some interest, there is a general apprehension that justice will not be carried out.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As a matter of fact, it is within his knowledge that no influence is exercised by the District Magistrate in the matter. I did not hear any statement made by him to that effect. Unlike in British India where there is only one High Court which is very far off from the remote corners of the country, and where, therefore, revisions will be very costly, here, any miscarriage of justice or error of procedure might at once be rectified by the High Court which is very near from all parts of the State.

MR. JOSEPH PANJIKARAN (*Shertallai*): If any underhand influence is brought to bear upon the administration of justice, is it possible for the public to know that?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In cases where a Government officer may be the prosecutor, it may be thought that the administration of justice might be affected. But in such cases an appeal lies to the First Class Magistrate and a revision to the Sessions Judge and also the High Court. That is why I said that, *as a matter of fact*, there will be no difficulty in cases of miscarriage of justice and other errors on the part of magistrates. So far as such matters are concerned, the decisions of the magistrates are entirely under the control of the judiciary.

Then it was stated that the District Magistrate has got some sort of power over the Sub-Magistrates; but such powers relate mainly to the revision of calendars, transfer of cases, and inspection.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I did not quite understand what Mr. Subba Aiyar meant when he said that the High Court has no control over the magistrates.

PRESIDENT: He said that the High Court *has* control.

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I said the High Court has control. What I said was that the Stationary Magistrate, in so far as his decisions are concerned, is absolutely free from the executive control of the District Magistrate. Therefore, so far as the Stationary Magistrates are concerned, my point is that, in the disposal of cases and hearing of appeals there has been complete separation and that there is nothing more that has to be done.

Coming to the Sessions Court and the High Court, I do not think that there too there is anything that has to be done, because they have purely judicial functions and everybody is satisfied that they are free from executive control. Therefore the only direction in which anything can be done and where Mr. Paramesvaran Pillai would like to have anything done is in the case of the Division Assistants and the District Magistrates. As regards them, I was saying that the District Magistrates were exercising powers over subordinate magistrates only with reference to three matters, *viz.*, revision of calendars, inspection and transfer of cases. These are the only three powers which the District Magistrates ordinarily exercise over the subordinate magistrates and the objection that is ordinarily levelled against the District Magistrate is that in certain cases he is both the prosecutor and the judge. So far as District Magistrates in Travancore are concerned, they have no interest in any of the departments, unlike in British India where the District Collectors are virtually the heads of the district and advise the district officers of the various departmnets. In Travancore, there is no such difficulty. The District Magistrates have nothing to do with the Forest, Excise or other departments. I concede that one should not be a prosecutor and a judge. In discharging the duties I have detailed above, the District Magistrates do not violate the above principle but only enforce promptitude and procedure and prevent the perversion of justice by not allowing prejudice to warp right judgment.

Supposing we divest these District Magistrates of their judicial functions, what is it that has to be done? I will come to that matter presently when I deal with another aspect of the question.

Another duty of the District Magistrate is the prevention of offences or the exercise of the powers of the preventive chapters of the Criminal Procedure Code, *viz.*, Chapters VIII to XII. With reference to these chapters, it will be conceded that, everywhere, prevention of offences is effected rather by the executive than by the judiciary. In every civilised country, whether in British India or elsewhere, it has all along been the duty of the executive. Therefore, it is absolutely necessary in public interests that the prevention of offences should be with the executive, for it is not enough if a Sessions Judge sits quiet in a room to exercise such powers. The officer will have to go n person and see if there is any chance of any breach of the peace being committed, and if so, put into effect the means of preventing the same. I do not think

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that anywhere the judiciary are entrusted with that function, and I may say that if anywhere it had been tried it would have proved a failure, because it would be impossible for the Sessions Judge to run up from his Bench to prevent offences. Therefore, so far as the preventive chapters are concerned, the work must vest in the executive.

My friend Mr. Paramesvaran Pillai referred to the Bengal Committee's Report and also said that the conditions in Travancore are different from those in British India. I also base my observations on that portion of his argument. So far as the other portions are concerned, the agitation in British India for the separation of the executive from the judiciary is due to various reasons.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know, Sir, whether the agitation was confined to Bengal alone?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): At any rate the agitation was started there for specific reasons which do not exist here. In Bengal, for instance, I understand that it was the police that were supplying the information that is being supplied by the village staff elsewhere, and that as a class they were unpopular. Again in Bengal every complaint has to be filed before a magistrate having jurisdiction over the whole District and he distributes these cases to the various subordinate magistrates. A complainant does not know, until he receives a notice, before whom he should appear to prosecute his case and the litigants are in consequence put to considerable difficulty. Such things do not exist here. But so far as the Stationary Magistrates here and their powers are concerned, they are similar to the conditions in Madras, where each magistrate has a local jurisdiction and is empowered to receive complaints and to dispose of cases that come before him, unless these cases happen to be transferred from him by the higher magistrates.

I may here refer to the other portion of Mr. Paramesvaran Pillai's observations with reference to the preventive provisions of the Criminal Procedure Code. With reference to this, there seems to be some difference of opinion and the Committee's report has not yet been accepted. They say that the initiative may be taken by the magistrate but the final order must be passed by the magistrate. That procedure is condemned in very strong words by the Madras Committee.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether the Madras Committee's Report is available to the public?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have got a copy.

That the Sessions Judge should dispose of the cases under the preventive section of the Code is not considered to be satisfactory. It is not enough if the District Magistrate takes the initiative alone. The power of disposal should also vest in him. It will be enough if the Sessions Judge is empowered to hear appeals from the decisions of the District Magistrates in such cases. But, to take prompt action and initiative it may not be possible for the Sessions Judge. Further,

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[Mr. V. Subba Aiyar.]

the Sessions Judge has very heavy work otherwise, so that, so far as the District Magistrates are concerned, they must continue to exercise the executive and preventive powers vested in them under the Criminal Procedure Code.

The only other thing left is as regards the powers vested in regard to supervision and transfer of cases which are very little. The question then is, with reference to these three powers that are now being exercised by the District Magistrates, whether they should be taken away. I may draw upon the experience of my lawyer friends to say whether the powers of transfer are restricted to the District Magistrates. Almost all the applications for transfer before the High Court are generally transfer of cases from one subordinate magistrate to another after going to the District Magistrates or before going to him. So the powers of transfer are not strictly confined to the District Magistrate. As a matter of fact the High Court does interfere with the decision of the District Magistrates in such cases. That being the case, it is purely nominal and I believe not of any serious consequence. The only other matter is with respect to the revision of calendars. So it is a matter for consideration whether we should go to the extent of appointing additional officers as Additional Magistrates or Sessions Judges. My friend Mr. Paramesvaran Pillai thinks that the additional Sessions Judges may be made District Magistrates and that no amendment of the Code is necessary. I would rather join issue with him because under the Criminal Procedure Code the Additional Sessions Judges do exercise the powers of a Sessions Judge. The sessions cases are transferred to them, *i. e.*, cases committed by the First Class Magistrates are tried by them; so that, unless you appoint some other officer and do not call him Additional Sessions Judge, Second Judge and Third Judge, the remedy will not be satisfactory. The result will be that we will have to create a particular class of officers for the purpose of hearing appeals. Now, these appeals, as will be found from the statistics, are very large in number, and as such they will require for each District another separate judge. The cry in the State has been for retrenchment and yesterday we spent a very large amount of time in considering that question. While so, whether for the purpose of removing the power that now vests in the District Magistrate, which is only nominal and which is insignificant—and I may even say of not any consequence—whether for this purpose we should go to the extent of creating a new class of officers and spending a large amount of money, is a matter to be seriously considered by this House.

The next point is whether the Division Assistants themselves could be divested of their revenue work. I may assure the House that if it were possible the Government would have no objection to do this. The possibilities of making some of these Division Assistants purely judicial officers and others purely Revenue Assistants to the Peishkars

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are being explored by the Government, and nothing can be said at present. There are eight Division Assistants according to my friend Mr. G. Parameswaran Pillai, and I believe he is correct.

PRESIDENT: Eight is correct.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As I said, whether some of these could be made purely First Class Magistrates and others purely Revenue Assistants is a matter the possibility of which is being explored by Government; and if Government find it possible to do so they will do it. If so, everything that could be done and is desirable to be done would have been done. That is why I started at the outset by saying that the Government accept the principle underlying the motion. Very little remains to be done. And therefore there is no use in bringing in the analogy of other provinces, where nothing seems to have been done. As the mover put it, the agitation began as early as 1792 and we are now at the end of 1923. And yet very little seems to have been done elsewhere. The Government here, I believe, have without any agitation done a good deal and gone a great way in trying to separate the judiciary from the executive. Going to the Madras Committee, the first resolution—

PRESIDENT: I am afraid it is a confidential document and you cannot refer to it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I did not know that. From what appeared in the papers, I gathered that the District Magistrates should continue to exercise their magisterial powers.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether any such thing was published in the papers?

PRESIDENT: I myself remember to have seen a short account of the committee's report in the newspapers.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I did not find any of these recommendations in detail.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The Bengal Committee's recommendations have not been accepted by the Government and I may assure my friend that it has not been accepted in Madras, irrespective of the conclusion other provinces may have come to. I believe I have convinced the House and I do not think that by the mere fact that the Bengal Committee has reported in a particular way the House is going to be convinced that way. Practically nowhere has it been tried.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know what the Madras Committee said about the administrative control of the entire branch of the judiciary also being transferred to the High Court?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am coming to that. The only other point is whether the appointment of these magistrates should be with the High Court or the Government.

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[Mr. G. Paramesvaran Pillai.]

There seems to be some misapprehension on the point. My friend was prepared to concede that the appointment of these magistrates may be with the Government as it is now.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I said so because there is no other body which *appoints* the other judicial officers as well.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): So far as the control of the magistracy is concerned, it lies with the High Court to interfere with them in any way they choose.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether the appointment of the magistrate is done in the same way as a munsiff is appointed?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is not done in the way in which it is done in the case of munsiffs; and the powers of appointment do not rest with the High Court. Almost all the higher appointments are made by the Government. I do not think that, because Government make these appointments, they interfere with the exercise of judicial functions. So far as the appointment of magistrates is concerned, one important point has to be taken into consideration. There may be and there is always some difference between the temperament as regards judicial functions and other functions, *e. g.*, magisterial functions, because, in the matter of the magisterial functions, the magistrate has to move with the people to be acquainted to some extent with the people of the locality and, therefore, as far as possible, Government would recruit magistrates from those persons who have got some acquaintance of the locality. At any rate, after they are appointed as magistrates, they are reverted as revenue officers in order that they may be able to discharge their functions later on in a higher magisterial capacity to better satisfaction, so that a change between the executive and the magistracy is desirable. What Mr. G. Paramesvaran Pillai wants is that the munsiffs and the magistrates should be interchangeable. That is why he pleaded for transferring the administrative control over the magistrates to the High Court. If he places the magistrates under the High Court, what are they to do for promotion? Are we to tell them, "once a magistrate always a magistrate"? Or should they be transferred to some other line in order that they may be able to rise higher? Otherwise, no magistrate would discharge his function properly. Therefore it was Mr. Paramesvaran Pillai suggested the interchange of the munsiffs and the magistrates. The question is about the disparity between the pay of the two sets of officers. The munsiff's pay rises from Rs. 200 to Rs. 350, and if the magistrates are to be interchangeable with munsiffs, their pay should be raised accordingly.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): What is the minimum pay of a temporary munsiff when he is acting?

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Rs. 150. The moment he is confirmed, he will, however, get the minimum pay of the scale.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Ordinarily, what period does it take for a munsiff to get confirmed?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): A year or two. I believe sometimes it takes even a couple of years. But, all the same, the moment he is confirmed—and I believe every year one or two munsiffs are confirmed—he begins to rise automatically irrespective of there being any vacancy in a particular grade. If the magistrates are to be placed in the grade of munsiffs, what will be the cost on account of that arrangement is a matter which has to be taken into consideration very seriously before the House sanctions the proposal. In the second place, if we say that the High Court should have the power, I will ask a question of practical politics. What are we to do with men with high educational qualifications who are entertained in the Secretariat, in the High Court and in the Account and other offices as clerks? Are they to remain as clerks only? It is wise to give free flow of promotions from one department to another. In my humble opinion, it is most desirable that we should have such an interchange as otherwise it will lead to complications. Very many graduates and graduates-in-law have been expecting promotions as magistrates and to say that the Government by so appointing them as magistrates interfere in any way with the discharge of judicial functions by those persons would indeed be regrettable. But so long as it has not been established, I beg to ask whether, in the interest of these young graduates-in-law or graduates in the service, it is desirable to say that they should be recommended hereafter only by the High Court. That is a matter, as stated by me already, which requires serious consideration. I think it desirable, in the interest of criminal administration, that a person should be at one time or other an executive officer so that he may have some idea about the persons of the locality and therefore be in a position to appreciate better the evidence in the cases that come before him, because in criminal cases, as everybody knows, much depends upon verbal or oral testimony and not upon documents; so that in the matter of criminal administration I think the change between the executive and the judiciary will be desirable and it is therefore absolutely necessary that the Government should have power of appointments in these matters.

I beg to state that whatever is possible has been done and as to what remains to be done every possibility of it is being explored by the Government. I therefore beg to think that Mr. G. Paramesvaran Pillai will be satisfied with what has been done by the Government and what may be done by the Government in the matter.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am in substantial agreement with the resolution that has been moved so ably by Mr. G. Paramesvaran Pillai. It has been moved with a wealth of reasons and principles, and the learned

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[Mr. T. K. Velu Pillai.]

mover has fortified it with the opinions of a brilliant galaxy of men, the name of any one of whom should weigh with this Council. Mr. Subba Aiyar has in a set of elaborate arguments agreed in the main with the resolution, but would accept the principle only with certain modifications and a few reservations.

As he has conceded that the separation of the functions of a Tahsildar and a magistrate had been deliberately made in view of the principle now contended for in this Resolution, I may urge upon the Council the necessity of separating the revenue functions and the magisterial functions in every taluk. The names of five taluks had been given in which the magistrate is also the Tahsildar. If there is any force in the argument that a combination of functions in the same officer may be detrimental to public justice, it is in these backward taluks that the separation should be at once effected.

PRESIDENT: If it were possible, the Government would have done that.

Mr. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish it would be done at once, because the question of cost resolves itself into question of nothing. In the nature of the pay that we give to these magistrates, the cost would come only to Rs. 6,000 odd.

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): For every office the cost would be Rs. 2,500.

Mr. T. K VELU PILLAI (*Trivandrum* cum *Nedumangad*): I think it is a question of some more funds. I was speaking only about the pay of magistrates, not of the establishment.

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Necessarily the magistrates want an office staff.

Mr. T. K VELU PILLAI (*Trivandrum* cum *Nedumangad*): I was going to speak about that when Mr. Subba Aiyar interrupted me. The appointment of five magistrates would involve some expenditure, probably something more than Rs. 6,000. But when we realise that we are spending a good deal of money on several matters, such as the Murajapam and other things, Rs. 6,000 or Rs. 10,000 that may be necessary for the appointment of five magistrates would be nothing in view of the principle that is now contended for.

My friend Mr. Subba Aiyar observed that, although the First Class Magistrates are executive officers, the public do not suffer. I can give him my own experience in this matter because I occasionally go to the criminal courts, while my friend Mr. Subba Aiyar does not go there as often as I do; and I know that, when vakils of position go there, the First Class Magistrate may not attend the court on certain days. We find him absent from the court oftentimes because he has been asked by the District Magistrates to go and inspect a treasury. That is not an only example. There is an atmosphere of indifference in their discharge of judicial duty when that is combined with revenue duty. I have

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observed it and my friends on this side—those who have gone to the magistrate's courts—will be able to testify to the fact that the amount of tention which may be devoted by the officer to the magisterial function sometimes resolves itself into slender limits. They are looked up to and regard themselves primarily as revenue officers. When the *Jamabandi* was introduced by Government, the First Class Magistrate had to go to a distant place and the vakil had to engage a car to go to the place and the poor client had to pay not only the vakil's fee but also the motor car charges, which are very high, and was thus put to great difficulty. But the Government wisely put a stop to that arrangement and now there is nothing to complain. I am referring to that only to show that the combination of these functions is very troublesome. As observed by me on a previous occasion when the budget was being discussed, I have always felt that the Income Tax Commissioner in spite of his judicial temperament is in a difficult situation because he is invested with quasi-judicial functions along with revenue duties. I shall therefore be glad if Government would see their way to effect a complete separation. The High Court, as has been observed by Mr. Subba Aiyar, have got appellate and revisional authorities, and if a magistrate goes wrong, no doubt the High Court can use their power and correct the mistake.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : Can they do it in every case?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I never said that. Sometimes the mistakes may be corrected. The difficulty is that our law is so framed that the High Cour in cases of revision refuse to go into the evidence in the case. If one is charged with a heinous crime, he is committed to the Sessions Court and convicted by the Sessions Judge, and there is an appeal to the High Court from the decision of the Sessions Court; but if the conviction is entered against an unfortunate man by a Second Class Magistrate, one who has been a Second Class Magistrate till the previous month will be sitting to hear the appeal and one who is temporarily put in charge of the court as a First Class Magistrate and who has not got a good knowledge of law will take his stand on the finding recorded by the Second Class Magistrate.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : May I ask whether the same is not the case in the case of a munsiff who is just promoted as a Second Judge.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I was just going to say that. The difficulty is that the First Class Magistrate who is not well posted in law and whose judicial temperament has not been sufficiently cultivated is often disposed to dismiss the appeals, because it is always easier to write a confirming judgment than a reversing judgment. Mr. Subba Aiyar put a question whether the munsiffs who are elevated as District Judges are not in the same position as First Class Magistrates. There is this distinction, that the munsiff from the time he enters the Judicial Department looks up to the seat of the District Judge and tries to qualify himself for that post and

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[Mr. T. K. Velu Pillai.]

learns all the law that he could get and perseveres himself to become an officer of greater experience as District and Sessions Judge. The magistrate thinks that he will become the District Magistrate if he gives satisfaction to his immediate superior in the Revenue Department. That is the difference. But the question of selection sometimes becomes very interesting. I know of a magistrate who indulges in quoting Shakespeare in judgment after judgment. But that does not mean that the magistrates alone are under this predicament. I know of a munsiff who is high up in the cadre of munsiffs having taken a journey to *Manusmriti* in order to decide a case among Syrian Christians. I am prepared to give the name privately in the latter case. I myself appeared in the High Court in appeal and so I can talk with some authority.

MR. A. HOOGEWERF (*Nominated*): What harm is there in introducing a little poetry in judgments?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Sir, I am a lover of poetry and I am not prepared in the matter of love of poetry to yield to anybody; and if the officer's poetry was consistent with law, I would not object. The difficulty arises only when the munsiff or the magistrate, in moments of aberration, travels into the fields of poetry in defiance of the principles of law. It is because of that that I took objection to quoting Shakespeare in the judgments.

I shall refer to nomination. Now, one question is whether we could get good men. It does not matter whether the High Court or the Government nominate. On this question of nomination, I have considerable difference of opinion with the learned mover. Because the Government will be able to get reports from the various heads of departments, from the representatives of the people and from the members of this Council itself in the course of discussions, they will be able to pick out the very best men for particular places in the magisterial line. But the High Court may come across certain clerks in the High Court and a few vakils so that their field for choice is greatly limited. We shall be doing a very bad thing indeed if we restrict the scope for selection, if we tell the young men who enter service in the various departments that they have no chance of going up to the higher appointments. Sir, I have got sufficient respect for the High Court; but I must observe that, in the matter of selection, in the nature of our country where for all practical purposes—I am sure some of my friends also will agree with me—everybody knows who is the "godfather" of a particular munsif or judge, when, long before the recommendations are made, people speak of A's man or B's man or C's man, I am of opinion that the High Court which is invulnerable, whose policy is not so much criticised in this Council as the policy of the executive, will be able to take shelter in the fact that it

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is a board composed of six members. On the other hand, the Government are more alive to public opinion in this country, so that if there are difficulties we shall be justified in pointing out those difficulties to the Government.

MR. A. HOOGEWERF (*Nominated*): Sir,—

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I have not finished. And the Government will be able to hear both sides of the arguments and make the nomination. I am, therefore, opposed to the principle that the Government should appoint magistrates only from among persons who have been nominated by the High Court; and my friend the mover of the resolution will also see eye to eye with me that before we give the powers that are now contended for, the High Court must be made sufficiently independent of the executive. No High Court Judges should have a hankering after a higher office. They must themselves not desire for any executive preferment. Now that some of the gentlemen who preside over the High Court are prepared to wish for higher things, for advancement in the executive, you cannot expect that the High Court will be able to do complete justice in the matter of nomination. So before we consider that aspect of the question we have to constitute the High Court into a body which is above all temptation, and which will find it possible to shake off the blandishments and the blandishing arguments that are advanced. I remember one case—

PRESIDENT: It is time.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Because my other friends have been putting questions to me and my time has been taken up by them. (*Laughter.*)

PRESIDENT: That is being done in every case.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I do not want to argue. I shall not take much time.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I raise as a general question that allowance should be made to the speakers on account of the time taken up in answering questions?

PRESIDENT: I am sorry the rules do not permit it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is no rule about interruptions either. (*Laughter.*)

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): In the case I was referring to, there was one who knew his business at the head of the administration, and felt that the matter was one which required rectification. The unfortunate man who only did justice—of course, I never meant any reflection because he is strong enough to bear that and even more—the integrity of the head of the administration put him back in his place. When Sir, the High Court Judges have been showing such a kind of temper in dismissing a judge for a supposed error in his judgment, I do not know—

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[Mr. Joseph Panjikaran.]

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know from Mr. Velu Pillai, whether the High Court Judges have got the power of dismissing judges?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I did not say "dismissed".

PRESIDENT: You used the word "dismissing", but you probably meant only suspension. The High Court have no such power.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I am not here for cross-examination. If my friend has any difficulty to find out a thing or to get any information, he is at perfect liberty to ask me.

When such is the case, when the judges wanted even that man should be dismissed because he took a view of law which is erroneous according to them, when the High Court is presided over by such people and when according to the laws of the land they are above the thunders of executive and beyond the reach of public criticism in this Council, I am not at all for giving them the power to nominate people to the magistrate's place. But if they are prepared to give Government the benefit of their views regarding the inefficiency or the efficiency of particular magistrates, they are at full liberty and they will avail themselves of every opportunity to do so by sending copies of their judgments to the Government so that the Government may act up to their judgments, if found proper. With these observations, I am very happy to appreciate and associate with the principle of this resolution.

MR. A. HOOGEWERF (*Nominated*): May I know whether this House is not entitled to criticise the executive function of the High Court?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): This House certainly has the power; but generally, in the matter of appointments by the High Court, when it is realised that six judges of the highest eminence in the land give a decision, it will be very difficult to prove that that decision is wrong. It is easier in the case of heads of departments.

MR. A. HOOGEWERF (*Nominated*): I see he is referring to one judge.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, I rise to support the motion that was moved by Mr. G. Paramesvaran Pillai. I have been closely listening to the speech made by my friend Mr. Subba Aiyar opposing the motion and I must acknowledge that I attach much weight to one of the arguments urged by him. That relates to the appointment of magistrates. I think he was right when he said that the power of appointing magistrates should not be taken away from the executive and given to the High Court. That will create much heartburning to the persons entertained in the Huzur Office. But on going

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through the resolution I do not see anything in the resolution which says that the appointments should be made by the High Court. Let the appointments as now be made by the executive, but as soon as the appointments are made there is no harm in their being brought under the administrative control of the High Court. It is to the administrative control now exercised by the executive that I seriously object. Whether the magistrate is appointed by the High Court or by the executive is not a matter of very great importance, but it is the administrative check which the executive or the highest judiciary in the State will be able to exercise on these magistrates that is most important. So giving weight to that argument of my friend Mr. Subba Aiyar, I might concede that the power of appointing magistrates may be vested in the executive as it is now, but as soon as they are appointed they must be subject to the administrative control of the highest judiciary in the State.

The other points on which Mr. Subba Aiyar opposed the resolution did not appeal to me. First of all, he stated that the revisional power of the High Court is enough to set everything right. As my friend Mr. Velu Pillai has observed, we all know the High Court exercises its revisional powers only when there is a question of law. In cases when there has been a concurrent finding on facts by two courts, my friend has been saying that this revisional power vested in the High Court is sufficient to rectify any evil. I do not think that he is right.

Then again it was argued that, though there is the District Magistrate, generally it is the First Class Magistrate who hears appeals from the Second Class Magistrate. In this connection I would urge upon the attention of my friend Mr. Subba Aiyar the fact that appeals are filed before the District Magistrate and it is he who sends them on to the First Class Magistrate for disposal.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): They are filed there and it is he who sends them over to the First Class Magistrate for disposal.

MR. JOSEPH PANJIKARAN (*Shertallai*): In the exercise of his power.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I understand that First Class Magistrates can receive appeals.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Under the Criminal Procedure Code, every District Magistrate can entertain appeals. First Class Magistrates are empowered to hear appeals.

PRESIDENT: Also to receive appeals.

MR. JOSEPH PANJIKARAN (*Shertallai*): Unless they are empowered by the Government, the District Magistrates cannot empower them.

PRESIDENT: They can also be empowered to receive appeals, I believe.

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[Mr. S. Krishna Aiyar.]

MR. JOSEPH PANJIKARAN (*Shertallai*): Appeals are filed in the court of the District Magistrate and then transferred by him to the First Class Magistrate for hearing and disposal. If that be the fact my fear is that cases in which departmental heads are specially interested will not be sent to the First Class Magistrate but will be disposed of by the District Magistrates.

PRESIDENT: That is a matter of detail which can be rectified.

MR. JOSEPH PANJIKARAN (*Shertallai*): Of course, matters of detail also affect individuals very much. We are not concerned with broad questions of policy alone. My friend Mr. Subba Aiyar tells us that till now no allegation has been made against the propriety of having judicial officers who are under executive control. That was exactly what my friends Mr. Kunjitomman and Paramesvaran Pillai have been saying, that there is a general apprehension in the country that pure justice is not administered on account of judicial officers exercising magisterial powers being placed under the executive. That is the general cry all over the country. On these grounds I support the resolution that was so ably moved by my friend Mr. Paramesvaran Pillai.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Karthigapalli*): Sir, Mr. Subba Aiyar's arguments were delivered with so much force and skill of advocacy that many of us have been carried off our feet. The principle has been accepted. The only question for Mr. Subba Aiyar to discuss was the evolution of a feasible scheme. He classified the magistracy into four divisions—firstly Stationary Magistrates, secondly the taluk magistrates, thirdly the First Class Magistrates or Division Assistants and fourthly the District Magistrates, and he went on to consider how far separation would be necessary and how far their present judicial work was affected by their being placed under the executive. In respect of the First Class Magistrates or the Division Assistants, he has been good enough to concede on behalf of the Government that the Government are considering the feasibility of divesting these officers of their executive or revenue functions. That is a very great source of satisfaction to us. With respect to taluk magistrates too, it is a very easy matter. There are after all only five taluk magistrates. Arguments were put forward by the Law Member that these have so very little work that more work has to be given and therefore magisterial work is still retained in his hand. Now it is very easy—

PRESIDENT: I do not think he put it like that.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): If they did only revenue work their work would be light; so also their judicial work. It is the combination that makes it sit heavy upon them. Now supposing they are given jurisdiction over two taluks it will be sufficient for them. In the place of the magisterial work which they are exercising it may be delegated to another officer so that separation may be very easily effected. So, that need not stand in our way. It was also here argued by Mr. Subba Iyer, that it may involve an unduly additional cost

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and this House has been on all occasions setting its face against all additional cost. Yesterday we had a lot of talk on retrenchment, but retrenchment on necessary lines. Out of the four functionaries, we have been discussing the taluk magistrate and the First Class Magistrate or Division Assistant. There remain only the Stationary Magistrates and the District Magistrates. As regards Stationary Magistrates we are prepared to concede that their work is purely and absolutely judicial and accept that they are under the control of the revenue heads of the department. There is not much to say in the matter. It may be that their appointments are recommended by the District Magistrates and the powers of transfer also vest directly in the executive heads of the department. After all what is asked for from this side of the House is only that all these posts may be brought direct under the High Court, and that the powers of the transfer and the recommendation for preferments or promotions may also vest with the High Court. That does not in any way affect their judicial functions. One other argument advanced is that there are numbers of clerks, graduates and graduates-in-law, already in service, that unless the executive retain in their hands the right of giving promotions, these graduates and graduates-in-law might suffer. I cannot regard that as an argument at all. (*Hear, hear.*) As was observed on very many occasions in this hall, the pay and prospects of the service should not be the predominant consideration. The service exists only for the State and not the State for the service. Therefore the pay or the promotions of individual clerks should not stand in the way of the principle. Lastly there is the question of District Magistrates. Here we are prepared to concede that so far as preventive powers are concerned they are not judicial. This side of the House will not have any objection to have the District Magistrate retaining such preventive powers. But there are other powers. One of them is the power of transfer of cases and such power of transfer is exercised because the District Magistrate is a sort of appellate authority though he does not possess the functions of an appellate court. Mr. Subba Aiyar here observed that applications for transfer are becoming rare and people are resorting to the High Court in greater numbers, that the District Magistrate has this power only nominally and that this power is not exercised to a very great extent. If so, what is the use of retaining this nominal power in the hands of these magistrates? It might be best in the interests of all concerned to divest the District Magistrate of this power entirely. There are certain sections under which appeals shall be heard only by the District Magistrate, *e. g.*, appeals about *thond* articles. This power, being judicial, may be divested from the District Magistrate and may be given to the First Class Magistrate so that the District Magistrate may be left entirely and absolutely with the powers of preventive action and nothing else. If then these reforms are effected the principle that has been accepted by the Government will be carried out to the greatest possible extent. So after all, the matter may be easily solved. When the District Magistrate is left with the preventive power alone we are content, and as Mr. Subba Aiyar has accepted the principle we have only to

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[Mr. K. Paramesvaran Pillai.]

see how far practical effect may be given to the principle. We are only here giving instances and working out practically the principle that has been accepted by Government, and in case some of these suggestions are accepted by the members on this side, we may not have any objection even to withdraw the resolution. We do not want to push the principle to its logical conclusion. We want to be practical politicians. With these observations, I commend the propcsition to the House.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, in supporting the proposition that is now before the House, I wish to say a few words. As has been pointed out by Mr. Subba Aiyar, the Government have agreed to or accepted the principle underlying this resolution. He has also gone so far as to show that the Government have not only accepted the principle but it was accepted long ago, and effect has also been given to the principle to a very large extent by creating separate Stationary Magistrates, the appellate authority over these magistrates being vested in the Division Assistants. So far as these Stationary magistrates are concerned he says that they are purely judicial officers and they are not specially under the control of the executive except that the appeals against their judgments are heard by the Divisional Assistants and that even if they commit any mistake those mistakes are subject to be corrected by the High Court in the exercise of their revisional authority. Now in regard to the Stationary Magistrates the fact remains in the first place that they are subject to the control of the District Magistrate who is an executive authority and who is responsible for the preservation of the peace of the District. The magistrates as a class are subordinate to the District Magistrate departmentally, though he does not hear any appeals against their decisions. His authority over these magistrates is not only confined to the transferring of cases from one magistrate to another but he is also the executive head of the magistracy. Now nothing has been said by Mr. Subba Aiyar as to how the effect of that control will be minimised. In regard to the revisional authority of the High Court, it appears to me that it is ineffective in removing the real grievance underlying the situation, because the High Court can exercise its revisional authority only when the magistrate has committed any irregularity in procedure or in law. Of course, if the magistrate commits any mistake due to ignorance or inadvertence or other causes it will be open to the High Court to correct that by the exercise of their revisional power. But what we were complaining of is not that. Our complaint is that the magistrate, being under the control of the executive is sometimes forced, in order to support the authority of the executive, to act against his conviction. In such cases the revisional authority of the High Court is powerless. And therefore, so far as this question of separation of the judicial from the executive is concerned the revisional authority vested in the High Court can have no effect in removing the danger that exists. As regards the appellate authority of the Divisional Assistant, I may submit that the Division Assistant,

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besides being himself an executive officer, is also subordinate to the District Magistrate. Thus the magistracy as a whole subordinate to the executive and the fact that appeals are heard by the Division Assistant does not remove the difficulty arising from the situation. So far as the District Magistrates are concerned, of course, it has been pointed out and very correctly that they are both executive and judicial officers, and the exercise of these two functions must necessarily conflict.

The administration of criminal justice forming one of the most important departments of the judicial service, it is necessary that it should be placed under the direct control of the highest judicial authority, *viz.*, the High Court. It may be pointed out that there is a fundamental difference between the criminal law and the civil law. So far as the latter is concerned, it is a matter between private parties and nobody else is interested in the decision of the case. But it is not so in the case of criminal law. It is a matter between the Government and the subject and therefore we must take it that the Sirkar has got an interest in it, especially as they are directly responsible for the preservation of the peace of the land. Therefore the judiciary—,civil or criminal—must be under the same authority. That is the justification for insisting upon a separation of the judiciary from the executive. Of course, the only difficulty pointed out is perhaps the cost. No doubt, it may involve some little more cost to the Government than what the administration of criminal justice at present costs. But it appears to me that it may be possible to prepare a scheme for the separation which does not involve any additional expenditure. I may make a suggestion, *viz.*, that the revenue administration of the country be placed under the direct control of the Revenue Commissioner. It appears to me that, after the creation of the Revenue Commissionership, there is absolutely no need for the preservation of the highly-paid Peishkarship. The Division Assistants may be divested of their magisterial functions and made purely revenue officers as Assistant Commissioners of Revenue. The Peishkars may be relieved of their revenue work and made purely judicial officers with power to try first class cases and to hear appeals from subordinate magistrates. These District Magistrates and the subordinate magistrates must be placed directly under the control and supervision of the High Court.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know whether he could tell the House if in any country magistrates are appointed by the highest judicial officers of that country?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have no information with respect to that; I must confess.

Of course, we must decide these matters by the circumstances and conditions existing in each country; and so far as I know, in Travancore there is no difficulty in placing the subordinate magistracy and the first class magistrates under the direct supervision of the High Court and even vesting in the High Court the power of recommending the appointment of these magistrates to the Government as they do in the case of munsiffs and subordinate judges. Mr. Subba Aiyar pointed out one difficulty about

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[Mr. P. K. Narayan: Pillai.]

the promotion of these magistrates He asks whether when once a man is appointed as a magistrate he is to have no chances of promotion. But that can be easily solved by not having two different grades as magistrates and munsiffs and by providing for an interchange. Mr. Subba Aiyar says it would involve increase of salary. I do not know why. If there is a proper grading, a magistrate may be sent out as a munsiff, and once a munsiff he will get his usual promotion. He must start as a magistrate. The District Magistrate may very well be appointed as Sessions Judge or additional Sessions Judge and therefore his career in the judicial service will not be blocked either. Such a change need not involve any additional expenditure of money or any injury to the officers concerned by blocking their chances of promotion. It appears to me therefore that it is not impossible if proper attention is paid to the matter to evolve a scheme which would effect a proper separation between the judicial and the executive without involving additional cost or any serious injury to the prospects of officers.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to ask whether, when High Court Judges might themselves under the present circumstances aspire to become the Head of the Administration, the House would leave the power of appointing the magistrates to the High Court.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): It appears to me that there is not a system which is perfect in any country and the imperfections are such as we must put up with. Nevertheless, it appears to me, even taking into consideration that imperfection, that it will be a very great advantage to place the whole system under the High Court.

PRESIDENT: We will now rise and meet again at 3-15.

The Council adjourned for lunch at 2-30 P. M. and re-assembled at 3-22 P. M.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I also rise to support the resolution before the House. With respect to the principle underlying the resolution it was quite gratifying to see my learned friend Mr. Subba Aiyar agreeing. He raised only certain difficulties by way of giving practical effect to the whole resolution; in other words, though he concedes the principle, he is not prepared to agree wholeheartedly with the resolution. The practical difficulties suggested, I would examine first.

The first of the practical difficulties had relation to financial considerations. I was surprised to hear the member in charge of the resolution for the Government raising that objection. For, yesterday till about 6 o'clock in this House the non-official side was pressing for a whole examination of the finances of the State and they pressed further that there were courses open along which retrenchment might be suggested. When the Government side is not prepared to allow an examination of

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the finances or to listen to possible suggestions as to how the finances may be utilised, I always thought that the Government were practically estopped from bringing forward a difficulty on grounds of financial position. But Mr. Subba Aiyar is not to be bound by the utterances of yesterday, and he has rubbed in the question of finance to thwart the resolution now before the House. That I think he is not entitled to urge so long as the Government for whom he now advocates that particular position is not prepared to allow an examination of the finances of the State.

Another objection raised by Subba Aiyar is quite pithily expressed by him in querying whether once a magistrate is appointed he should be always a magistrate, with the extended corollary whether once a clerk is appointed he is always to be a clerk. This statement of Mr. Subba Aiyar is an analogue of another doctrine that we lawyers generally come across to the effect: "once a mortgage always a mortgage". With respect to the doctrine, it was observed lately by one of the Eng'ish Judges that the doctrine of the clog of the equity of redemption is something like an unruly dog which, if it is not chained to the kennel, is likely to wander into places where it is least required. Now I would submit on the analogy of the observation of the learned Judge that these doctrines advanced by Mr. Subba Aiyar are always dangerous unless modified by the circumstances in each case.

Mr. Subba Aiyar also wanted to appeal to the sympathies of this House when he referred to the position and the drooping-out look of the various clerks employed under the Government in the different departments. He said, therefore, that in the matter of appointments the Government having a wide field for the appointments and promotion of all these clerks, it is better that the patronage question is reserved in the hands of the Government so that the magistrates' posts, etc., may be filled up by the gradual promotion of these clerks. Now, this question of patronage is one of those questions which, I always thought, was the subject which vexed various communities in the land. I thought the Government were above such consideration. But Mr. Subba Aiyar now tells us that the Government are equally anxious about the question of patronage in the matter of their own clerks. Now, that ought not to be the outlook in the matter of the appointment of magistrates, implying as it does the avowed object of giving promotions to clerks as magistrates. If Government think—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I never said that clerks are promoted as magistrates.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Not directly, probably; but by a system of gradual promotion, so that a clerk may go into the position of a magistrate. Mr. Subba Aiyar thinks that Government should retain this particular power of patronage with them. I have always thought, Sir, that, so far as the appointment of a magistrate is concerned, it is the fitness of the person to be appointed more than any other consideration that should weigh with the Government. But another principle unfortunately seems to run subterraneously to the avowed object of Government in this matter.

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[Mr. P. K. Narayana Pillai.]

As to the question raised as to which is the proper body to exercise this patronage some friends take the view that it ought to be the Government and others that it ought to be the High Court. When it comes to the question of patronage, I fear, there may not be very much to choose between the High Court and the Government. Therefore I am not very particular on that ground at all.

What I am concerned with is not the influence at the point of the appointment, but the influence which will be exercised upon the magistracy subsequent to the appointment. It is the wholesome fear of meeting with due punishments if misconduct is indulged in, that would keep the magistracy in the proper line. Now, in that respect, it is very difficult to expect the Government to be always supervising the judicial work of the magistracy. The body that is directly concerned with that work ultimately is the High Court. So, what I am pressing upon the attention of the House in that respect is that, with respect to the punishments to be meted out to magistrates in the matter of their judicial work, invariably the punishments ought to proceed from the High Court, in spite of the fact that the appointment may rest with the Government in the magisterial line. It is that which should act as a secure check upon the proceedings of magistrates with respect to their judicial functions.

Before the separation, and after the separation, to the extent to which it has been effected in the State now, there seems to be a considerable change in the method of work before the magistarates. Before the separation to the extent to which it has been effected now, I have appeared before magistrates, and also subsequent to that. I declare that, before the separation had been effected, I had to wait before magistrates till half past five, before a case could be called. One magistrate did not make any secret of his profession in that respect. He distinctly told me that he would first of all attend to communications from the Palace and then to those from the Huzur Office. Then he had got the bugbear of the Account Officer always watching him. After these things, after lunch, he would at about five o'clock call the parties in the criminal case, and being somewhat diligent, he used to sit up till ten o'clock at least. (*Laughter.*) That was the sort of attention paid by the magistrates before the separation. The other day, I appeared also after the separation before another magistrate, when I found to my gratification that there was a considerable change in the tone of the magistrate's proceedings. First of all I observed that the magistrate, a young man who was presiding, was quite ready to meet the arguments brought up round the points of law. The man was quite up to the mark and I was glad that there was a change in the tone of the work. To that extent, therefore, we are certainly thankful to the Government that they have done so much. But what remains to be done is that which had been represented by Mr. Subba Aiyar as only a very small residue confined to six or seven first class magistrates, and three or four District Magistrates, (that is the small

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residue according to Mr. Subba Aiyar); but the pernicious influence of the small residue is likely to permeate the whole system, with the recurring cries of the people for a separation—an entire separation of the judicial from the executive. The reaction of the power of the executive on the judicial functions is marked not so much directly as indirectly. Mr. Subba Aiyar, just like the lawyer, referred to the evidence upon the matter to satisfy the House. "Is there not ultimately the revisional power in the High Court? Is there not the power for you to move the High Court and put up a petition? Where is your hardship?" That, of course, is a very correct argument so far as it goes. But it ignores the underground sort of work that we are so much afraid of. The District Magistrate is the party that controls the magistracy within his jurisdiction, and occasionally the Government also may be seen, even against the avowed policy of the Government, to come in to criticise the magistrates.

For example, with respect to the question that the magistrates make frequent references to the police for enquiry, in one Administration Report the Government found that the magistrate was not right in doing that. For the purposes of enquiry and report the magistrate has judicial authority. Since the magistrates happen to be so much under the hands of the Government, they ultimately ignore the fact that the Government are not their superiors under the Criminal Procedure Code, and that this sort of interference is objectionable. With respect to the District Magistrates also, the suspicion is entertained that they somehow or other share the policy of magisterial subservience to a considerable extent. It is not visible; hence the trouble. So much so, to give the final quietus to complaints on this head, Government will do well to have absolutely nothing in the way of combining judicial and executive powers. That is the point I wish to empahsise in this connection.

Then it was remarked that only four or five Tahsildar-Magistrates have been left here and there and that is nothing serious. My friend referred to Minachil by way of illustration. Evidently he does not understand the position there. We who hail from Kottayam are in a better position to speak with respect to that, as we have been able to judge from the reverberations in the Kottayam Sessions Court as to the volume of criminal activity in the Minachil taluk. So that is not a very correct statement. The ground upon which Mr Subba Aiyar seeks to oppose the proposition is the financial consideration, and once a magistrate, not always a magistrate; once a clerk, not always a clerk. The so-called practical difficulties and the nebulous suggestion of other difficulties will not stand the test of scrutiny before the House, and I have very great pleasure in supporting the resolution for the acceptance of this House.

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*): എക്സിക്യൂട്ടീവും, ജുഡിഷ്യറിയും വേർതിരിക്കണമെന്നുള്ള മിസ്റ്റർ ജ. പരമേശ്വരൻപിള്ളയുടെ പ്രമേയത്തെ ഞാൻ ബലമായി അനുകൂലിക്കുന്നു.

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[Mr. T. Kumara Pillai.]

ഈ പ്രമേയത്തിലുള്ള തത്വത്തെ മിസ്റ്റർ സുബ്ബയ്യർ അനുകൂലിച്ചു പറഞ്ഞതിൽ ഞാൻ സന്തോഷിക്കുന്നു. ഇങ്ങനെ പറഞ്ഞതുകൊണ്ടുമാത്രം മതിയാകുന്നതല്ല. എക്സിക്യൂട്ടീവും, ജുഡിഷ്യറിയും വേർതിരിക്കണമെന്നു പറയുന്നതിനു പ്രേരിപ്പിച്ചിട്ടുള്ളതായ അസൌകര്യങ്ങളെ പ്രവൃത്തിയാൽ നീക്കി കൊടുത്തെങ്കിൽ മാത്രമെ പ്രയോജനകരമായി തീരുകയുള്ളൂ.

മജിസ്ട്രേട്ടന്മാരെ നിയമിക്കുന്ന അധികാരം ഗവർൺമെൻറിലോ ഹൈക്കോടതിയിലോ ഏവിടെയാണ് സ്ഥിതിചെയ്യേണ്ടതെന്നുള്ള ബലമായ വാദപ്രതിവാദം നടന്നിരിക്കുന്നു. ഈ അധികാരം ആരിൽ സ്ഥിതിചെയ്യുന്നതിനുപ്പറ്റിയും ജനങ്ങൾക്ക് അനേഷിക്കേണ്ട ആവശ്യമുണ്ടെന്നു തോന്നുന്നില്ല. അവക്കു ക്രിമിനൽ കേസ്സുകളിൽ കളങ്കരഹിതമായ ന്യായം കിട്ടണമെന്നു മാത്രമയുള്ളൂ. ഉൽകൃഷ്ടപരീക്ഷാവിജയികളായ വെറുപ്പക്കാരുടെ രക്ഷയെ പയ്യാറാചിക്കുന്നതായാൽ മജിസ്ട്രേട്ടന്മാരുടെ നിയമനാധികാരം ഗവർൺമെൻറിൽ സ്ഥിതിചെയ്യുന്നത് ഉചിതമായിരിക്കുന്നതാണ്. ഹജൂർ ആഫീസിൽ നിന്നും എക്സിക്യൂട്ടീവിലേക്കും, എക്സിക്യൂട്ടീവിൽനിന്നും ജുഡിഷ്യലിലേക്കും, അതുപോലെ തിരിയെ ഹജൂരിലേക്കും നിയമിക്കുന്നതിനു സൌകര്യം കിട്ടുന്നതാണ്. ഇങ്ങനെ വരുമ്പോൾ സർവ്വാ യോഗ്യന്മാരെ അതാതു വകുപ്പുകളിലേക്കു തിരഞ്ഞെടുത്തു നിയമിക്കാൻ സാധിക്കുന്നതാണ്. എക്സിക്യൂട്ടീവും, ജുഡിഷ്യറിയും വേർതിരിച്ചുകിട്ടുന്നതായ കാലത്തു, നൽകരം നിറുത്തി പണക്കരാക്കിയപ്പോൾ ജനങ്ങൾക്കുണ്ടായിട്ടുള്ള ആശ്വാസവും സന്തോഷവും ഉണ്ടാകുമെന്നുപറയുന്നതിൽ എനിക്കു സംശയം തോന്നുന്നില്ല. മജിസ്ട്രേട്ടന്മാരുടെ ജോലി സംബന്ധമായുള്ള അധികാരം ഹൈക്കോടതിയുടെ കീഴ്വഴുതിയിൽപോകുന്നതായാൽ ജനങ്ങൾക്കു പൂർണ്ണമായ രക്ഷകിട്ടുമെന്നാണ് അവർ വിശ്വസിച്ചുപോരുന്നത്. ഫാറസ റ്റ് കേസ്സുകൾ, എക്സൈസ് കേസ്സുകൾ, ഉദ്യോഗസ്ഥന്മാരുടെ പേരിലുള്ള കൈക്കുലികേസ്സുകൾ, ഇവ മജിസ്ട്രേട്ടന്മാരുടെ കൈയിൽ കിട്ടാതിരിക്കണമെന്നു ജനങ്ങൾക്കു പ്രത്യേകം താൽപര്യമുള്ളതായി കാണുന്നു. വിശേഷിച്ചും ഉദ്യോഗസ്ഥന്മാരുടെ പേരിലുള്ള കൈക്കുലികേസ്സുകൾ മജിസ്ട്രേട്ടന്മാർ കഴിയും വേഗത്തിൽ സെഷൻസുകോട്ടിൽ കമ്മിറ്റു ചെയ്യുന്നതിനു കക്ഷികൾ ആഗ്രഹിക്കയും പ്രാർത്ഥിക്കയും ചെയ്തുവരുന്ന വിവരം എനിക്ക് അറിയാവുന്നതാണ്. ശിക്ഷാനിയമത്തെ കൈകാര്യം ചെയ്യുന്ന അധികൃതന്മാരെപ്പറ്റി ജനങ്ങൾക്ക് അങ്ങിനെയൊരു ഒരഭിപ്രായം തോന്നിക്കാൻ ഇടയില്ലാത്തതാണ്.

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ഇതേ സംഗതിയെപ്പററി ക്ര വ-ാമത്തെ ശ്രീമൂ൦ പ്രജാസഭയിൽ കന്നത്തുനാട്ട മെംബർ മിസ്ററർ വി. ആർ. ഗോ ാലപിള്ള ഇങ്ങനെ പറഞ്ഞിരിക്കുന്നു :—

"The subordinate magistrates showed special favour towards the prosecution side in departmental cases, *i. e.*, Forest, Police and Excise. Adjournments were frequently made owing to the absence of the prosecuting officers and parties and witnesses suffered in consequence."

അതിലേക്കു ദിവാൻജി അവർകൾ പറഞ്ഞിട്ടുള്ള മറുപടി ഇങ്ങനെയാണ് :—

"You then refer to the special favour shown by magistrates to the prosecutions in departmental cases. You have not quoted any specific instances and I am afraid that the charge is unfounded. I have not come across any instance in which the head of a department has reported against a magistrate or blamed him for deciding cases in a particular way."

ഗവർൺമെൻറിന്റെ ഈ വാക്കുകൾ ജനങ്ങൾക്കു വല്ലതായ സമാധാനത്തെ തരുന്നതാണ്. എന്നാൽ കഴിഞ്ഞ മാണ്ട് ഈ കൌൺസിലിൽ "Prohibition of the manufacture and importation of liquor" എന്നുള്ള പ്രമേയത്തെപ്പററി വാദപ്രതിവാദം നടക്കുന്ന കാലത്തു എക്സൈസ് കേസ്സുകളിൽ മജിസ്ട്രേട്ടന്മാരുടെ കുറഞ്ഞ ശിക്ഷകളെപ്പററി എക്സൈസ് കമിഷണർ ഇങ്ങനെ പറഞ്ഞിരിക്കുന്നു :—

"I have complained year after year of the very low punishments awarded by magistrates in abkari cases. Such punishments, far from being deterrent, have only the effect of encouraging the offender to go back and repeat his offence and of rendering the excise officers' work difficult and disheartening."

സക്കാർകേസുകളെന്നോ, ജനങ്ങളുടെ കേസുകളെന്നോ, ഉള്ള വ്യത്യാസങ്ങളെ മജിസ്ട്രേട്ടന്മാർ ഗണിക്കാതെ അവർ ന്യായം നടത്തേണ്ടതാണെന്നു ഗവർൺമെൻറു വിചാരിക്കുന്നതായും, ഡിപ്പാർട്ടുമെൻറ് അധികൃതന്മാർ ആ സമഭാവനയിൽ തൃപ്തിപ്പെടുന്നില്ലെന്നും തെളിയുന്നു. എന്നു തന്നെയല്ല, ഗവർൺമെൻറിനെ പ്രേരിപ്പിച്ചു മജിസ്ട്രേട്ടന്മാരെക്കൊണ്ടു കൂടുതൽ ശിക്ഷ കൊടുപ്പിക്കുന്നതിനു ശ്രമിക്കുന്നതായ അധികൃതന്മാർ ഡിപ്പാർട്ടുമെൻറു കേസ്സുകളിലെ കക്ഷികൾക്കു ന്യായം കിട്ടുന്നതിൽ എന്തെല്ലാം പ്രതിബന്ധങ്ങളെ ഉണ്ടാക്കിത്തീർക്കുമെന്നുള്ളതു് എല്ലാവർക്കും അനുമാനിക്കാവുന്നതാണ്. എക്സൈസുകേസ്സുകളെ മജിസ്ട്രേട്ടന്മാർ വളരെ സൂക്ഷിച്ചും ആലോചിച്ചും തീരുമാനിക്കേണ്ടതാണ്. അതിനെ ഒരു ദൃഷ്ടാന്തംകൊണ്ടു തെളിയിക്കാം. അക്കാനിയിൽ കുറെ സോഡാപ്പൊടി ഇട്ടാൽ അതു കള്ളായിത്തീരുന്നു. ഈ സമ്പ്രദായം തെക്കൻതിരുവിതാംകൂറിലുള്ള എക്സൈസ് ഉദ്യോഗസ്ഥന്മാർക്കും അവരുടെ കീഴ്സിൽബന്ധികൾക്കും അറിയാവുന്നതുപോലെ അവിടെയുള്ള ജനങ്ങൾക്കും അറിയാവുന്നതാണ്. പന കയറി അക്കാനി എടുക്കുന്ന ഒരു നാടാനോട് വിരോ

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[Mr. G. Parameswaran Pillai.]

ധമുള്ളവർക്ക് ആ സാധുവിനെ ശിക്ഷിപ്പിക്കാൻ ഒരു പ്രയാസവും ഇല്ലാത്തതാണ്. വൈകുന്നേരം ഇവൻ പന കയറിപ്പോയതിൽ പിന്നീട് അക്കാനി ഏടുക്കുന്ന പാത്രത്തിൽ കുറെ സോഡാപ്പൊടി ഇട്ടിരുന്നാൽ പിറെറദിവസത്തേക്ക് അതു കള്ളായിത്തീരുകയും, കള്ളവായി കള്ളുണ്ടാക്കി എന്നുള്ള എക്സൈസ്കേസ്സ് അവന്റെ പേരിൽ എടുക്കയും ചെയ്യാവുന്നതാണ്. എക്സൈസ്ഡിപ്പാർട്ട്മെൻറിലെ കീഴ്സിൽബന്തികൾക്ക് ഈ വഴിയിൽ സാധുക്കളെ ഉപദ്രവിക്കുന്നതിനും അവരോടു കൈക്കൂലി വാങ്ങുന്നതിനും വളരെ സൌകര്യമായി തീർന്നിരിക്കുന്നു. ഇത്തരം കേസ്സുകളിൽ കൈക്കൂലി കൊടുക്കാൻ ഗതിയില്ലാത്ത കക്ഷിയാണെങ്കിൽ അവർ ആ കേസ്സിനെ ചാജ്ജ് ചെയ്യുന്നു. ഇങ്ങനെ ചാജ്ജ് ചെയ്യുന്ന കേസുകളെ മജിസ്ട്രേട്ടന്മാർ കഠിനമായി ശിക്ഷിക്കണമെന്നും, അവർ ശിക്ഷിക്കുമെന്നും വരുന്നതായാൽ ജനങ്ങളുടെ രക്ഷ എങ്ങനെ നിലനിൽക്കുമെന്നുള്ളതു പറയേണ്ട ആവശ്യമില്ലാത്തതാണ്. സർക്കാർകേസുകളാണെങ്കിലും അല്ലെങ്കിലും മജിസ്ട്രേട്ടന്മാർ ന്യായം നടത്തേണ്ടതാണെന്നു ദിവാൻജി അവർകൾ പ്രജാസഭയിൽവച്ചു പരസ്യമായി പറഞ്ഞിരിക്കയും അതിനാൽ ജനങ്ങൾ സമാധാനത്തോടിരിക്കയും ചെയ്യുമ്പോൾ എക്സൈസുകേസുകളിലുള്ള കക്ഷികളെ മജിസ്ട്രേട്ടന്മാർ ശരിയായി ശിക്ഷിക്കുന്നില്ലെന്നു മിസ്റ്റർ വാൻ റാസ് ഒരിക്കലും ഈ കൌൺസിലിൽ വച്ചു പറയാൻ പാടില്ലാത്തതാണ്. എക്സൈസ്കമിഷണർ പരസ്യമായിപറഞ്ഞിട്ടുള്ള ഈ അഭിപ്രായം ഗവർൺമെൻറിനെ വിഷമത്തിലാക്കുന്നു. ജനങ്ങൾക്കു ഗവർൺമെൻറിനോട് ഉണ്ടായിരിക്കേണ്ട വിശ്വാസത്തിനു കുറവുണ്ടാക്കുന്നു. ഇങ്ങനെയൊരു പ്രവൃത്തി ഒരു ഡിപ്പാർട്ടുമെൻറിലെ അധ്യക്ഷൻ ഒരിക്കലും ചെയ്യാൻ പാടില്ലാത്തതാണ്. ഇങ്ങനെയുള്ള പലേ കാരണങ്ങളാലും ജനങ്ങളുടെ ന്യായമായ രക്ഷയ്ക്കു വേണ്ടി എക്സിക്യൂട്ടീവും ജുഡിഷ്യറിയും വേർതിരിക്കണമെന്നു തന്നെയാണ് എനിക്ക് അഭിപ്രായമുള്ളത്.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I am extremely—

MR. A. J. VAN ROSS (*Excise Commissioner*): Sir, I wish to put a question to Mr. Kumara Pillai.

PRESIDENT: Mr. Kumara Pillai has sat down. You cannot ask him questions now.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I am extremely gratified to note that my friends on this side of the House are in substantial agreement with the resolution that has been moved by me. On the other side it was stated by Mr. Subba

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Aiyar that Government accepted the principle contained in the resolution. If, as a matter of fact, Government had accepted the principle contained in the resolution, I should have expected quite a different speech from Mr. Subba Aiyar in regard to the most fundamental points raised in the resolution. To me, Sir, no system of separation can be conceived of where the control over the magistracy rests, and is intended to rest in the executive and not in the highest judiciary. So, then, to say that the principle of separation has been accepted is misleading. I would just briefly meet some of the material arguments advanced by Mr. Subba Aiyar.

In regard to the taluk magistrates it has been said that it was only a question of finance. If they could afford to do it, Government would at once separate the judicial functions from the five taluk magistrates who are now exercising revenue functions also. In view of the statement that the revenue work of those taluk magistrates is not very heavy, it is a matter for consideration whether the Assistant Tahsildars in those taluks cannot be dispensed with and the money utilised for the purpose of separation. For, the Assistant Tahsildar will then become no more necessary, as the revenue work of the Tahsildar is not after all very heavy, and so, that part of the scheme may at once be given effect to. In regard to the subordinate magistracy, my friend proceeded as if there had been complete separation. I made the point quite clear. You cannot think of any separation so long as the executive alone controls those magistrates. The control provided for in the Criminal Procedure Code by way of appeal and revision is not the sort of control I am thinking of. It is erroneous to conceive that the separation is complete even in regard to the subordinate magistracy.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know from Mr. G. Paramesvaran Pillai, if it is not the powers of revision and appeal, what is the sort of control that he is thinking of?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): They should exercise the same control that the High Court exercises over the civil branch of the judiciary. I noticed that those friends on this side who supported referred to the administrative control over the magistracy. I think that should not rest with the Government. Among us there was only a difference of opinion in regard to initial appointments. That, I regard, is a minor point and a matter of detail which may well be left out of consideration for the moment. My point is that there cannot be real separation unless the executive is divested of all administrative control over the magistrates.

PRESIDENT: Mr. Krishna Aiyangar wants to know, I think, what that administrative control is.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): By administrative control, I mean that the Government should have power to transfer, punish or promote the magistrates only on the recommendations made by the highest judiciary in the land. In other words, the

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[President.]

same control that the High Court now exercises over the civil staff under it should extend over the criminal branch as well.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask Mr. Paramesvaran Pillai whether he has come across cases in which magistrates have been fined with reference to their magisterial duties?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): By whom?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I will explain. Now the Government alone can fine; I want to know if there are cases in which magistrates were fined by any other body.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I have not collected the figures.

PRESIDENT: He wants to know if there is any case.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I am not aware.

My point is that the same control that the High Court exercises over the civil branch of justice should be extended in respect of the criminal branch as well, so that there might be uniformity and also purity of administration in the entire judiciary.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to ask one further question. What is his view about the appointment and transfer of the clerks and menial servants of the magistrates—whether the control over them should be with the Government or the High Court?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I think they should have the same power as the High Court has over the District Courts in respect of the civil line. These are purely matters of detail which may well be settled hereafter by the Government in consultation with the non-official members or by themselves.

In regard to the District Magistrates and the Division Assistants, it was pointed out by my friend that the powers they now exercise under chapters VIII to XII must be regarded as executive more than judicial. I beg to differ from my friend in that respect, because he might himself be aware of the fact that in respect of the action taken by the District Magistrate or the Division Assistant under chapters VIII and X they are treated as judicial acts and are subject to the revisional powers of the High Court. Merely because the District Magistrates, who are also responsible for the maintenance of law and order, are empowered to take action under the preventive sections of the Criminal Procedure Code, it should not be argued that their acts are purely of an executive character.

PRESIDENT: I do not think that is what Mr. Subba Aiyar suggested. What he told us was that they were judicial functions that ought to be exercised by a magistrate.

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MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Originally what he said was that the orders issued under chapters VIII to XII were more of an executive character than judicial. My friend Mr. Krishna Aiyar suggested that there was some difficulty in regard to the Sessions Judges being asked to hear appeals from the magistrates. As a matter of fact, that again is a matter of detail as to who should be empowered to hear the appeals. I said "a Sessions Judge or a *purely* judicial officer empowered in that behalf." I am satisfied with the assurance given by Mr. Subba Aiyar in that respect. He said that Government were exploring the possibility of divesting the Division Assistants of the State of their revenue and executive functions and deputing them purely for judicial work. If that be done, certainly that objection would not prevail. So I say that appeals should be heard by some officers who will have nothing to do with the revenue or executive functions. Neither the appellate nor the revisional powers nor the administrative control should be exercised by anybody other than the highest judicial authority in the land. That is the pivot of my argument. Then, my friend Mr. Subba Aiyar complained that I did not refer to any particular instances where the District Magistrates or the Division Assistants were found to have caused miscarriage of justice. I did not refer to particular instances, deliberately because after all we cannot place much reliance on public impression only. I have only to refer to one or two statements made in the Administration Reports to show, as has been remarked by one of the speakers, that the magistrates were not doing the proper thing when they referred cases to the police for preliminary investigation. Secondly, I have found it stated in two successive Administration Reports that the magistrates will do well to remember that they are not properly discharging their duties in regard to the award of compensation in cases where Government servants are accused. They have been repeating this in two reports that magistrates will do well hereafter to take due note of it. And my friend Mr. Kumara Pillai referred to the excise cases. I might also refer to one or two anomalies. Under the Revenue Recovery Regulation action is being taken on the recommendation of the Division Assistants and on the sanction of the Dewan Peishkars under the sections of the Regulation. I am referring to the cases under section 54 of the Regulation relating to distraint of movables and attachment of immovable properties. So, practically he is also a judge as well as a prosecutor, because it is under his order that the action is taken under the Revenue Recovery Regulation in which case he is both the deciding factor as well as a prosecutor.

PRESIDENT: Can you mention that section?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Under section 54 of the Revenue Recovery Regulation, they have got the power to try and convict cases in which steps have been taken in pursuance of the sanction given by them as Division Peishkars.

I submit, therefore, when my friend stated that he accepted the principle, I thought that the desirability of the question of separation was

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[Mr. G. Parameswaran Pillai.]

out of the disputed field. But my friend, after accepting the principle, has again stated that it was also necessary to consider whether any such separation would be desirable. No one has made an attempt towards the working out of a scheme in regard to that matter. If Mr. Subba Aiyar had attempted any such scheme and had told us that the cost would be prohibitive, I could have understood it. So far as I am concerned, I have already placed before the Council a scheme. I do not think that it is perfect and that it is not capable of modification. On the other hand, I do not deny that it may require modification in details. With the least possible additional cost, I should consider—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : I wish to know, whether it is not necessary for the House to know the extra expenditure that will have to be entailed, before voting on the motion.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : That is exactly why I said it would not require any additional cost whatever. If Government only take care to set free at least half the number of Division Assistants—certainly 12 are not necessary with their high salary for the discharge of revenue functions—much money could be saved. So I depend upon the Government to set free those officers for judicial functions so as not to encumber us with additional expenditure. So far as the sub-magistrates are concerned, we do not at all incur any additional expenditure. Already they are full-time judicial officers. We have to transfer only the control over them to the High Court along with the separation. There we cannot say that we are standing on an entirely different footing from the people elsewhere. In British India——

PRESIDENT : There are very many Stationary Sub-Magistrates in British India.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : Nevertheless, the extra expenditure entailed will not be much larger. We do not want many more sub-magistrates to exercise first class powers if these Division Assistants are set free. If the Deputy President wishes to know what the additional cost would come to, my answer is that we do not stand to incur anything by way of additional expenditure. Some funds may be required for the appointment of some more copyists and clerks.

My friend Mr. Subba Aiyar has not told us anything in regard to the administrative control. I referred to the Bengal Committee's Report which unanimously stated that the administrative control should be transferred to the High Court and I refer to Mr. Subba Aiyar because he might probably be in the know of things because he said that he had the Madras Committee's Report which is now said to be confidential. Does not the Madras Committee too recommend that the administrative control over the magistracy, just as in the case of the civil courts of the Madras Presidency, should vest in the High Court? I suppose that persons who advocate the separation of the judicial from the

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executive functions cannot but advocate that. That is the essence of the whole discussion. So it is not fair to argue that the principle has been accepted, though my friend will not accept this principle even.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I will briefly sum up the points of discussion. From that it will be conceived that there is not much difference between the non-official and the official sides and there is not much to be voted upon also.

In the first place, coming to the subordinate magistracy it is now conceded and certified to by Mr. P. K. Narayana Pillai himself that the magistracy is very efficient. Apart from the question of the administrative control which my friend referred to and about which Mr. Krishna Aiyangar wanted a little more information, he said that the High Court should have complete control. The point that I wish to emphasise is this: whatever Mr. G. Parameswaran Pillai would advocate about the control of the magistracy by the High Court does exist now and is being exercised now.

Every Judge of the High Court inspects the Magistrates' Courts in spite of the heavy work in the High Court. They do inspect the magistrates' courts, they control the work of the magistrates' courts, they review their work, and whenever a magistrate's work is not satisfactory, they recommend to the Government that he ought to be degraded or punished, and such recommendations are invariably given effect to by Government. Ordinarily the High Court is consulted before dealing with any magistrate and I do not know what further control is necessary.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I wish to know from the Law Member whether the promotion or transfer of a magistrate is made by Government in consultation with the High Court.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): So far as the transfer is concerned, it is a matter entirely, as I said, with Government, as in the case of all ordinary executive subordinates, and there is nothing serious with regard to that. With reference to the question of promotion, as a matter of fact, it goes according to seniority, unless when an officer's work is condemned by the High Court, in which case it is taken note of by the Government. I think that, by itself, will show that they are under the control of the High Court.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I wish to know what my friend's reasons are for not extending the same control to the High Court in respect of the criminal judiciary as in the case of the civil judiciary.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It was pointed out that it is a matter of patronage. It is not so; for heads of departments will only be glad to be out of the worries thereof. It is not that which has to be taken into consideration.

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[Mr. Joseph Panjikaran.]

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether magistrates are not directly recruited from the Account Office and the Secretariat—clerks having no local knowledge and experience?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As far as possible it is not done. If they are sent out as magistrates they are promoted as Tahsildars and then promoted as superior magistrates. They thus have an opportunity to move with the people, to rub shoulders with them and thus know their character.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I beg to know from Mr. Subba Aiyar what happend to the magistrate or magistrates whose action was condemned in the High Court judgment in the Chalai Riot case?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am not in a position to answer him at present. First of all, it is a very old case. I am not in possession of an answer on the spur of the moment.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If you remember—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know. If it is a recent thing—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): One of such condemned magistrates was made a munsiff.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): A munsiff's appointment is sanctioned by the Government always on the recommendation of the High Court, I suppose. (*Laughter.*)

Therefore, what I say is that when they recommended the man in question for the munsiff's place, they might have reconsidered the question and found him to be an efficient officer.

I may assure the House that the question of the appointment of Stationary Magistrates in the five taluks I referred to also will be considered by the Government. As for the Division Assistants also I have said that the matter is being considered by the Government. The only point left is whether the District Magistrates should be divested of their powers of transfer. That is a very small matter. In consideration of the fact that very little remains to be done, I hope Mr. Paramesvaran Pillai will consider it worth while to withdraw the motion instead of pressing it to a division.

The resolution was put to the vote and lost, 17 voting *for*, and 22 *against*.

MR. JOSEPH PANJIKARAN (*Shertallai*): I demand a poll.

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A poll was taken, and the House divided as follows :—

AYES—17.

1. Mr. T. K. Velu Pillai.
2. ,, K. Dominic Tomman.
3. ,, P. K. Narayana Pillai.
4. ,, M. N. Pillai.
5. ,, N. Padmanabha Pillai.
6. ,, Joseph Panjikaran.
7. ,, G. Paramesvaran Pillai.
8. ,, K. Paramesvaran Pillai.
9. ,, N. Ramakrishna Pillai.
10. Mr. K. C. Mammen Mappillai.
11. ,, M. R. Madhava Variar.
12. ,, Tariatu Kunjitomman.
13. ,, T. Kumara Pillai.
14. ,, C. P. Kochukunju Pillai.
15. ,, A. Hoogewerf.
16. ,, A. Govinda Menon.
17. ,, T. M. Chidambaratanu Pillai.

NOES—22.

1. Mr. I. C. Chacko.
2. ,, R. Dhanukoti Pillai.
3. ,, L. C. Hodgson.
4. ,, R. Krishna Pillai.
5. Dr. N. Kunjan Pillai.
6. Dewan Bahadur Dr. P. N. Lakshmanan.
7. Mr. K. V. Natesa Aiyar.
8. ,, R. Nilakanda Pillai.
9. ,, S. Paramesvara Aiyar.
10. ,, W. H. Pitt.
11. Rao Bahadur K. V. Rangaswami Aiyangar.
12. Mr. M. Raja Raja Varma.
13. ,, S. C. H. Robinson.
14. ,, V. Subba Aiyar.
15. ,, A. J. Van Ross.
16. ,, P. Paramesvaran.
17. ,, T. Lakshmana Pillai.
18. ,, Trivikramar Vasudevar.
19. ,, S. Subrahmanya Karayalar.
20. ,, C. Ramankunju.
21. Rao Bahadur K. A. Krishna Aiyangar.
22. Mr. M. K. Khadir Pillai.

Appointment of a Committee to Examine the Abkari Policy with Special Reference to the Adoption of the Policy of Local Option.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I beg to move that—

This Council recommends to the Government that a committee be appointed to examine the Abkari policy of the Government with special reference to the introduction of the principle of local option.

Sir, the proceedings of this House, ever since the inauguration of the Council Regulation of 1095, will testify to the public impression that affairs in the Excise Department stand in need of thorough revision and detailed examination. The adverse criticisms on the excise policy of the State ventilated in this House must be fresh in the minds of the members and I do not propose to take up the time of the Council by covering the same ground over again. The need for taking definite and advanced steps towards promoting the cause of temperance has been ably argued before the House by my friends Messrs. Hoogewerf and Madhava Variar. A resolution tabled on the subject last year by Mr. Madhava Variar was withdrawn on the assurance given by the Excise

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